

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S OBLIGATIONS)
PURSUANT TO HEA 1279 FOR THE PROTECTION)
OF CERTAIN INFORMATION PROVIDED IN)
RESPONSE TO THE COMMISSION'S 2007)
COMMUNICATIONS SURVEY AS TRADE)
SECRET AND CONFIDENTIAL PURSUANT TO)
IND. CODE 8-1-2.6-13, AND PURSUANT TO)
FEDERAL LAW TO PROTECT CERTAIN)
COMPANY-SPECIFIC DATA ON THE FEDERAL)
COMMUNICATIONS COMMISSION'S FORM 477)
TO BE PROVIDED TO THE COMMISSION IN)
RESPONSE TO THIS ORDER)

CAUSE NO. 43436

APPROVED:

FEB 13 2008

BY THE COMMISSION:

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On March 14, 2006, the Governor of the State of Indiana signed into law House Enrolled Act 1279 ("HEA 1279"), as enacted by the 2006 Indiana General Assembly ("Legislature"). Pursuant to Ind. Code 8-1-2.6-4, as amended, the Indiana Utility Regulatory Commission ("Commission") must report annually to the Legislature's regulatory flexibility committee regarding the effects of competition and technological change on universal service and pricing for Indiana telecommunications services as well as the status of competition and technological change in the provision of video service to Indiana customers. *See*, I.C. §8-1-2.6-4 and I.C. §8-1-1-2. Explicit in this mandate is the obligation to safeguard the confidential nature of potentially sensitive material submitted to the Commission. *See*, I.C. §§8-1-2.6-13(d)(9)(A)(ii), I.C. 8-1-32.5-6(a)(9)(B), and I.C. 8-1-32.5-6(d).

Consistent with these regulatory obligations, the Commission has developed a Communications Survey ("Survey") to gather data for the Commission's report to the Legislature. The Commission has also created a streamlined procedure for carriers to submit confidential information in response to that Survey.

1. **Commission Jurisdiction.** The Commission is required to safeguard the confidential nature of potentially sensitive material submitted to the Commission. *See* I.C. §§8-1-2.6-13(d)(9)(A)(ii), I.C. 8-1-32.5-6(a)(9)(B), I.C. 8-1-32.5-6(d). The Commission may also prescribe such regulation as it sees fit regarding the submission of confidential documents. 170 I.A.C. 1-1.1-4. Therefore, the Commission has jurisdiction over the subject matter of this proceeding to the extent provided by law.

2. Commission Discussion and Findings.

A. The Commission's Communications Survey for Calendar Year 2007

The Commission has initiated this docket in order to allow for the timely collection of data needed for the 2008 Report to the Regulatory Flexibility Committee. In 2007, the Commission determined that multiple individual requests for confidentiality of portions of Survey responses was not in the best interest of the carriers or the Commission. Accordingly, the Commission issued an Order in Cause No. 43227 to provide a streamlined process to allow for the timely and orderly submission of responses which carriers believed should be accorded confidential treatment.

The purpose of this docket is: (1) to allow for continued submission of confidentiality requests, and subsequent filing of confidential responses to the Survey and (2) to create a new process for receiving certain company-specific responses to the Federal Communications Commission ("FCC") Form 477 surveys. **This cause is not for submission of general responses to the Survey itself, which should be submitted directly to the Commission's Communications Division staff.** We note that Commission staff has revised portions of the Survey since last year. Where appropriate those revisions are reflected in the discussion of the types of responses that may be accorded preliminary confidentiality. Those carriers that do not feel it necessary to seek confidential treatment for their responses to the Survey do not need to file anything in this cause, and may simply complete the survey and submit it to the Commission's staff directly.

The Commission has determined that the following information, requested as part of the Survey, may meet the standards of confidentiality under our statutes. As such, we find it appropriate to grant confidential treatment on a **preliminary** basis to information in the following categories, subject to carriers' proper submission of a request as set forth more fully below.

Part II. Basic Telecommunications Services.

Section 2. Percentage of customers subscribing to basic telecommunications service in carriers' service area since 2005.

Part III. Video Services.

Section (B). Number of subscribers purchasing basic analog service.

Section (C). Number of subscribers purchasing other analog video services or packages.

Section (D). Number of subscribers purchasing video digital service.

Part IV.B. Estimated Broadband Availability.

Estimated broadband availability in each county to which broadband connection service could be provided by carrier or carrier's affiliate.

While such information may be accorded preliminary confidentiality, carriers must still request such treatment, using the following protocol.

(i) On or before March 28, 2008, a carrier must file a written request for confidential treatment. The request must contain a sworn statement that describes the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. 8-1-2-29 and I.C. 5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. 1-1.1-4(b). Trade secret information is generally defined as containing four (4) elements: 1) information; 2) deriving independent economic value; 3) not generally known, or readily ascertainable by proper means by others who can obtain economic value from the information's disclosure or use; and 4) the subject of efforts, reasonable under the circumstances, to maintain its secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. App. 2000).

(ii) Each requesting carrier will be accorded an individual sub-docket number under this Cause upon the filing of the request.

(iii) The confidential responses should be submitted simultaneously with the request for confidential treatment, hand delivered to the Presiding Officer in a sealed envelope that is clearly marked "confidential" with the sub-docket Cause Number noted thereon. The confidential responses must be submitted on light green paper, thereby readily identifying the information as confidential.

If submitted in this manner, the above-described survey responses will be deemed preliminarily confidential to allow for review by the Commission. Concurrently, the carrier must submit a copy of the Survey to the Commission's Communications Division, with the confidential sections redacted.

Carriers may also request confidential treatment of other sections of the Survey using the standard confidentiality protocol. **The Commission finds that carriers desiring confidential treatment for other sections of the Survey must submit those requests on or before March 7, 2008.** Such requests must also comply with 170 I.A.C. 1-1.1-4, as set forth above. Once the confidentiality request is received, the Presiding Officer will review the requests, and render a ruling within ten (10) business days of receipt as to whether the documentation should be accorded confidential treatment.

B. FCC Form 477.

The Commission is also requesting Indiana broadband connection service providers (as that service is described in Part IV of the Survey) that provided such service during Calendar Year 2007, and also filed a response to the FCC Form 477 for any part of Calendar Year 2007, to file a copy, including any corrections and revisions, of the Form 477 Indiana-specific data it has filed (or will file) with the FCC. In order to facilitate the Commission's compilation and analysis of the data, this CY 2007 Form 477 data set shall be filed with the Commission in a single document covering all of Calendar Year 2007 (including both Jan. – June and July – Dec. 2007 data) concurrently with a company's filing of the July – Dec. 2007 Form 477 data with the FCC.

The Commission has previously indicated to the FCC its position that Indiana state law affords procedural and substantive protections equal to, or greater than, the federal Freedom of Information Act and other rules regarding access to public records. The FCC has advised the Commission that the company-specific Form 477 data as described above is confidential under federal law. The Commission is a public agency subject to I.C. § 5-14-3, and will handle and maintain any company-specific data received from the companies in accordance with the requirements of I.C. § 5-14-3, including, but not limited to, I.C. § 5-14-3-4(a)(3). That statutory section specifically excepts from public disclosure documents "required to be kept confidential by federal law." The Commission is bound by this statutory restriction and will abide by it. Therefore, the Commission finds that such broadband connection service providers shall provide the above-described Form 477 data, and that it will be held as exempt from public disclosure pursuant to I.C. § 5-14-3-4(a)(3). Such providers should provide the appropriate copies of the Form 477 data when responding to the Survey.


IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. All communications carriers requesting confidential treatment of their responses to the Commission's Calendar Year 2007 Communications Survey must file the responses as set forth herein.
2. All communications providers that provided broadband connection service (as described in Part IV of the Commission survey) in Indiana during Calendar Year 2007 and that filed a Form 477 with the FCC for 2007 must file a complete and current copy with the Commission of their Form 477 Indiana-specific data, as described above.
3. This Order shall be effective on and after the date of its approval.

GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: FEB 13 2008

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Brenda A. Howe
Secretary to the Commission**